

**UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 13**

MAGNUM TRANSPORTATION INC.,	)	
	)	
Employer,	)	
	)	
And	)	
	)	
EXCAVATING, GRADING, ASPHALT,	)	
PRIVATE SCAVENGERS and RECYCLERS,	)	
AUTOMOBILE SALESROOM GARAGE	)	
ATTENDANTS, LINEN and LAUNDRY and	)	
MACHINERY, SCRAP IRON, STEEL and	)	
METAL TRADE CHAUFFEURS, HANDLERS,	)	
HELPERS and ALLOY FABRICATORS,	)	
TEAMSTERS LOCAL UNION NO. 731	)	
	)	
Petitioner.	)	

Case No. 13-RC-113924

**EXCEPTIONS OF THE EMPLOYER MAGNUM TRANSPORTATION, INC.  
TO THE HEARING OFFICER'S REPORT ON CHALLENGE AND OBJECTIONS**

MAGNUM TRANSPORTATION, INC., the Employer in the above-captioned case, by its attorneys, pursuant to Rule 102.69 of the Rules and Regulations of the National Labor Relations Board, hereby submits the following Exceptions to the Hearing Officer's Report on Challenge and Objections, dated February 6, 2014:

1. The finding (Report, p. 3) that the challenge to the ballot of Anthony Inendino should be sustained and the vote not counted, because the credible evidence submitted by the Employer and controlling Board law requires a finding that the challenge be overruled and the vote counted.

2. The failure to find that the challenge to the vote of Anthony Inendino be overruled, and that his ballot should be opened and counted as part of an amended tally of

ballots, since the credible evidence submitted by the Employer and controlling Board law requires that result.

3. The failure to find that the ballot marked by Anthony Inendino with an X on the backside was void and of no legal consequence, and should be treated just as if the voter had not voted at all, because applicable case law requires that result.

4. The failure to find that Anthony Inendino told Board Agent Tim Koch during the time that the polls were open that the reason he only put an 'X' on the outside of the folded ballot was because nobody had told him to open the ballot up and read the inside of the ballot, since the credible evidence submitted by the Employer requires that result.

5. The failure to find that Board Agent Tim Koch told Anthony Inendino that "maybe my instructions were kind of vague, I should have told you to open a ballot up and look at the ballot on the inside," because the credible evidence submitted by the Employer requires that result.

6. The failure to specifically find that the testimony of witness Angelo Ouellette to the effect that Board Agent Tim Koch fully explained to Inendino the how to use the ballot before he folded the ballot, and that Koch did not say his instructions might have been "vague," should not be credited since Ouellette's testimony was evasive, contradictory and not believable in the context of the other uncontroverted record evidence.

7. The finding (Report, p. 3) that Board case law precludes Anthony Inendino from having his challenged ballot count as it would mean he would be voting twice, since the case law cited by the Hearing Officer applies in situations where a voter has cast an otherwise valid ballot and then seeks to change that after the polls are closed, and such case law does not specifically apply to situations where the voter has not cast a valid ballot and seeks to correct a void ballot.

8. The finding (Report, p. 3) that “policy considerations” preclude Anthony Inendino from withdrawing his void ballot and casting a second ballot, since the credible evidence submitted by the Employer and controlling case law establishes that Anthony Inendino never cast a valid ballot and was entitled to correct that error and to cast a single valid ballot.

9. The failure to find that a void ballot such as that initially cast by Anthony Inendino is a nullity and is just as if the person had never voted, because controlling case law requires that result.

10. The finding (Report, p. 3) that allowing Anthony Inendino’s challenged ballot to be counted would be inconsistent with the Board’s policy of maintaining the secrecy of a voter’s ballot, since such a legal conclusion if adopted by the Board would preclude the opening of a single challenged ballot even if that ballot was outcome determinative, which is not a correct statement of applicable Board law.

11. The failure to fully credit the testimony of Anthony Inendino (Report, p. 3) regarding the circumstances of the mismarking of his initial ballot, because the credible evidence submitted by the Employer fully supports crediting his testimony.

12. The finding (Report, p. 3) that allowing Anthony Inendino’s challenged ballot to be counted would be inconsistent with the Board’s policy of preventing possible abuses to the election process, since the cases relied upon by the Hearing Officer to support of that finding deal with a voter’s attempt to withdraw an otherwise validly cast ballot, and do not involve the situation present in the case at bar in which the voter is trying to correct a void ballot that did not express the voter’s intent and present the possibility of coercing the voter to change a validly cast ballot.

13. The finding (Report, p. 3) that allowing Anthony Inendino's challenged ballot to be counted would be encourage employees in future elections to discuss their ballots and create an avenue for potential fraud and abuse, since there are no facts in the record to suggest that such a potential exists under the facts presented in the instant case.

14. The failure to find that Board Agent Tim Koch should have exercised his authority to retrieve Inendino's void ballot from the ballot box as Inendino requested and to allow him to cast a proper ballot, because the credible evidence submitted by the Employer and applicable Board law supports such a finding.

15. The finding (Report, p. 4) that Anthony Inendino's ballot could not be treated like a spoiled ballot since he had cast the ballot and the Board Agent could not retrieve the ballot from the ballot box, since the credible evidence submitted by the Employer and applicable Board case law establishes that the ballot was void and a nullity, and the Board Agent could have withdrawn the void ballot from the ballot box.

16. The finding (Report, p. 4) that the Board Agent engaged in no misconduct when he failed to open Anthony Inendino's challenged ballot since the credible evidence submitted by the Employer and controlling Board case law requires the opposite conclusion.

17. The failure to find that the Board Agent engaged in misconduct when he failed to open Anthony Inendino's challenged ballot since the credible evidence submitted by the Employer and controlling Board case law requires that result.

18. The finding (Report p. 5) that the Employer's Objection No. 1 does not encompass the contention that Board Agent Tim Koch caused the confusion of Anthony Inendino in mismarking his ballot, since the weight of the record evidence and controlling Board case law supports the conclusion that the allegations raised by the Employer are sufficiently

related to the Objection and were fully litigated at the hearing, thereby allowing the Employer to raising those issues as reasons for setting aside the election due to the conduct of the election.

19. The finding (Report p. 5) that the conduct of the Board Agent Tim Koch did not justify setting aside the election, because the weight of credible evidence submitted by the Employer, as well as controlling Board case law, requires the finding that the manner in which the Board Agent dealt with the ballots and the instructions which were given to the voters, caused Anthony Inendino to void his ballot, and which requires that the election be set aside.

20. The failure to find that Board Agent Tim Koch had no reason under applicable Board election guidelines to tender a folded ballot to voters, and was not legally required to do so, which fact led to confusion by voter Anthony Inendino, because the credible evidence submitted by the Employer requires that finding.

21. The failure to find that the instructions given by Board Agent Tim Koch to Anthony Inendino to simply mark an "X" on a pre-folded ballot led to the confusion of the voter and caused him to void his ballot, because the credible evidence submitted by the Employer requires that finding.

22. The failure to find that Board Agent Tim Koch's failure to properly assist voter Anthony Inendino after being asked for assistance was a factor in causing Inendino to void his ballot, because the credible evidence submitted by the Employer requires that finding.

23. The finding (Report, p. 5) that the Employer's Objection No. 1 be overruled and that a Certification of Representative be issued, since the credible evidence submitted by the Employer and controlling Board case law requires the opposite conclusion.

24. The failure to find that Employer's Objection No. 1 be sustained and the election set aside and re-run due to the overall conduct of the Board Agent which led to the confusion of

voter Anthony Inendino and caused him to void his ballot, because the credible evidence submitted by the Employer and controlling board case law requires that result.

In support of its Exceptions, the Employer submits an accompanying memorandum of law.

Respectfully submitted,

MAGNUM TRANSPORTATION INC.

/s/ Michael W. Duffee

By: \_\_\_\_\_  
One of Its Attorneys

Michael W. Duffee  
Thompson Coburn LLP  
55 E. Monroe Street, 37<sup>th</sup> Floor  
Chicago, Illinois 60603  
(312) 580-2218  
[mduffee@thompsoncoburn.com](mailto:mduffee@thompsoncoburn.com)

Dated: February 20, 2014

## CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he served the foregoing **EXCEPTIONS OF THE EMPLOYER MAGNUM TRANSPORTATION, INC. TO THE HEARING OFFICER'S REPORT ON CHALLENGE AND OBJECTIONS** this 20th day of February, 2014, via the Board's electronic filing system and by e-mail to the following person(s):

Gary Shinnars  
Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570-0001

Robert E. Bloch, Esq.  
Dowd, Bloch & Bennett  
8 South Michigan Avenue, 19<sup>th</sup> Floor  
Chicago, Illinois 60603

and by messenger to the following person(s):

Peter Sung Ohr  
Regional Director  
National Labor Relations Board  
Region 13  
The Rookery Building  
209 S. LaSalle Street, Suite 900  
Chicago, Illinois 60604-1443

/s/ Michael W. Duffee

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Michael W. Duffee

Michael W. Duffee  
Thompson Coburn LLP  
55 E. Monroe Street, 37th Floor  
Chicago, Illinois 60603  
(312) 580-2218  
[mduffee@thompsoncoburn.com](mailto:mduffee@thompsoncoburn.com)

Dated: February 20, 2014